

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

MICHAEL ADKISSON,

v.

Plaintiff,

JAMES DZURENDA, et al.,

Defendants.

Case No. 3:23-cv-00287-MMD-CLB

ORDER

I. SUMMARY

Pro se Plaintiff Michael Adkisson, who is incarcerated in the custody of the Nevada Department of Corrections (“NDOC”), has submitted a Motion for Extension of Time to File Objections to Screening Order (ECF No. 7) and a Motion for Extension of Time to File Amended Complaint (“Motion to Extend” (ECF No. 8)).

II. BACKGROUND

On March 1, 2024, the Court issued a screening order permitting one claim alleging First Amendment denial of access to courts to proceed against Defendants Dzurenda and Breitenbach. (ECF No. 5.) The Court stayed the action for 90 days to allow Plaintiff and Defendants an opportunity to settle their dispute on the remaining claim and referred the case to the Court’s Inmate Early Mediation Program. (*Id.* at 8-9.) The inmate early mediation conference is scheduled for April 30, 2024. (ECF No. 10.)

The Court interpreted Plaintiff’s allegations based on NRS § 193.165 as challenging the validity of his confinement or the particulars affecting its duration, which is in the province of habeas corpus. (*Id.* at 5.) Accordingly, the Court dismissed any constitutional claims based on NRS § 193.165 without prejudice to Plaintiff raising such claims in a separate petition for writ of habeas corpus. (*Id.* at 8.) The Court dismissed Plaintiff’s First Amendment legal mail claim without prejudice and dismissed his

1 Fourteenth Amendment due process claim related to the denial of Plaintiff's voting rights
2 with prejudice as amendment would be futile. (*Id.*)

3 **III. DISCUSSION**

4 Plaintiff requests a 30-day extension of time to file an amended complaint and
5 objections to the Court's screening order. Plaintiff asserts he has relied on the assistance
6 of another inmate, John Quintero, to draft his complaint. (ECF No. at 4.) Another inmate,
7 Paul Klein, assisted Plaintiff in drafting his Motions to Extend as well as an amended
8 complaint. (*Id.*) He asserts that an amended complaint and/or objections to the Court's
9 screening order "will resolve a few legal issues and matters at law," but he does not
10 specify which claims he intends to resolve or if he intends to allege new claims for relief.
11 (*Id.*)

12 Under Federal Rule of Civil Procedure 15(a)(1)(A), a party may amend its pleading
13 once as a matter of course within 21 days of serving it. Local Rule 15-1(a) requires that
14 the party requesting leave to amend, "attach the proposed amended pleading to any
15 motion seeking leave of the court to file an amended pleading. The proposed amended
16 pleading must be complete in and of itself without reference to the superseded pleading
17 and must include all copies of all exhibits referred to in the proposed amended pleading."
18 Although Plaintiff is *pro se*, he must still follow the Local Rules. To the extent Plaintiff is
19 requesting leave to amend, the Court denies his motion because he did not attach a copy
20 of his proposed amended complaint. The Court will grant Plaintiff an extension of time to
21 file any objections as well as a renewed motion for leave to amend his complaint and
22 instructs Plaintiff to attach a proposed amended complaint. The Court will screen his
23 amended complaint under 28 U.S.C. § 1915A, which may take several months. As a
24 result, the Court will vacate the inmate early mediation conference scheduled for April 30,
25 2024.

26 Plaintiff will have 30 days from the date of this order to file his objections to the
27 Court's screening order and/or a renewed motion for leave to amend his complaint with
28 an attached proposed amended complaint. If Plaintiff chooses to file an amended

1 complaint, he is advised that an amended complaint replaces the complaint, so the
2 amended complaint must be complete in itself. See *Hal Roach Studios, Inc. v. Richard*
3 *Feiner & Co., Inc.*, 896 F.2d 1542, 1546 (9th Cir. 1989) (holding that “[t]he fact that a party
4 was named in the original complaint is irrelevant; an amended pleading supersedes the
5 original”); see also *Lacey v. Maricopa Cnty.*, 693 F.3d 896, 928 (9th Cir. 2012) (holding
6 that for claims dismissed with prejudice, a plaintiff is not required to reallege such claims
7 in a subsequent amended complaint to preserve them for appeal). This means that the
8 amended complaint must contain all facts and claims and identify all defendants that he
9 intends to sue, including the claim found cognizable in the Court’s screening order. He
10 must file the amended complaint on this Court’s approved prisoner-civil-rights form, and
11 it must be entitled “First Amended Complaint.” Plaintiff must follow the instructions on the
12 form. He need not and should not allege very many facts in the “nature of the case”
13 section of the form. Rather, in each claim, he should allege facts sufficient to show what
14 each defendant did to violate his civil rights. He must file the renewed motion to amend
15 his complaint within 30 days of the date of this order. If Plaintiff chooses not to file an
16 amended complaint, this action will proceed on the First Amendment denial of access to
17 courts claim against Defendants Dzurenda and Breitenbach only.

18 **IV. CONCLUSION**

19 It is therefore ordered that Plaintiff Michael Adkisson’s Motion for Extension of
20 Time to File Objections to Screening Order (ECF No. 7) is granted.

21 It is further ordered that Plaintiff’s Motion for Extension of Time to File Amended
22 Complaint (ECF No. 8) is granted to the extent Plaintiff is requesting leave to file a
23 renewed motion for leave to amend.

24 It is further ordered that Plaintiff will have 30 days from the date of this order to file
25 his objections to the Court’s screening order and/or a renewed motion for leave to amend
26 his complaint with an attached proposed amended complaint.

27 The Clerk of Court is further directed to send to Plaintiff the approved form for filing
28 a § 1983 complaint, instructions for the same, and a copy of his original complaint (ECF

1 No. 6). If Plaintiff chooses to file an amended complaint, he should use the approved form
2 and mark "First Amended Complaint" in the caption.

3 It is further ordered that, if Plaintiff chooses to file an amended complaint, the Court
4 will screen the amended complaint in a separate screening order. The screening process
5 will take several months.

6 It is further ordered that, if Plaintiff chooses not to file an amended complaint, this
7 action will proceed immediately on the First Amendment denial of access to courts claim
8 only.

9 The Clerk of Court is further directed to vacate the inmate early mediation
10 conference set for April 30, 2024.

11 DATED THIS 27th Day of March 2024.



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13 MIRANDA M. DU
14 CHIEF UNITED STATES DISTRICT JUDGE
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